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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 292

CHARLES A. BAHR, SR., AND GEORGE HAMMAN, EXECUTORS OF THE ESTATE OF EUGENE L. BENDER, DECEASED, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 41–47) is reported at 41 B. T. A. 80. The opinions of the Circuit Court of Appeals for the Fifth Circuit (R. 58–69) are reported at 119 F. (2d) 371.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Fifth Circuit was entered on April 22, 1941 (R. 69). The petition for a writ of

certiorari was filed on July 21, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the gross value of a prior estate or its net value is to be used in determining the deduction allowable to a decedent's estate under Section 303 (a) (2) of the Revenue Act of 1926, as amended, for property previously taxed.

2. Whether the taxes and debts of a prior estate are allowable as deductions under Section 303 (a) (2) of the Revenue Act of 1926, as amended, from a decedent's gross estate.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the applicable statute and regulations are set forth in the Appendix, *infra,* pp. 8–10.

STATEMENT

The facts as found by the Board of Tax Appeals (R. 41–47) may be summarized as follows:

The prior decedent, Frank Bender, died testate on March 18, 1934 (R. 41). His brother, Eugene Bender, the decedent, died on December 1, 1934.[1] All of the estate of the prior decedent, after ex-

[1] Frank's estate had not been administered and no distribution had been made at the time of decedent's death.

cluding the community interest of his wife, was left to the decedent. The two brothers were partners, each owning a one-half interest in the partnership,

The Commissioner determined the gross value of the estate of the prior decedent to be $913,147.40. In determining the amount of the previously taxed property passing from the prior estate to the estate of the decedent, the Commissioner deducted from the gross figure of the prior estate allowable deductions of $150,650.29, and estate and inheritance taxes of $108,992.81. The sum of $649,706.88 representing the computed net value of the prior estate was included in the gross estate of decedent, and a deduction in the same amount was allowed as representing property identified as having been previously taxed in the estate of the prior decedent[2] (R. 42). No deduction was allowed the estate of this decedent for estate and inheritance taxes paid upon the prior estate. One-fourth of the partnership debts was allowed as a deduction in the prior estate, and one-fourth was attributed to the wife of the prior decedent; the

[2] The application of the formula provided in Section 303 (a) (2), as amended, resulted in the allowance of a deduction of $488,437.47 in computing the 1926 tax, and of $503,337.05 in computing the 1932 tax (R. 14). The difference is due to the fact that the specific exemption which is a factor in the computation is lower under the 1932 Act.

remaining one-half of such debts was allowed as a deduction in the present estate (R. 42–43).

The case was tried on a stipulation of facts and the determinations of the Commissioner were affirmed by the Board (R. 47). The decision of the Board of Tax Appeals was affirmed by the Circuit Court of Appeals for the Fifth Circuit (R. 63).

ARGUMENT

Section 303 (a) (2) of the Revenue Act of 1926, as amended by Section 806 (a) of the Revenue Act of 1932, provides that in determining the net estate there shall be allowed as a deduction the value of property upon which an estate tax has been previously paid within the past five years subject to a reduction based on the ratio of certain other deductions to the decedent's gross estate. The purpose of the provision was to prevent taxing the same property twice within a five-year period. H. Rep. No. 767, 65th Cong., 2nd Sess., p. 22 (1939–1 Cum. Bull. (Part 2) 102). To be entitled to the deduction it must be shown that such property can be identified as having been received by the decedent, and further that an estate tax has been finally determined and paid by the prior decedent.

The petitioners contend, however, that in determining the allowable deduction for property previously taxed the basic figure is not the $649,706.88 determined by the Commissioner, but

$913,147.40, the gross value of the estate of the prior decedent. The court below held that the Commissioner was correct in first deducting the taxes and expenses of the prior estate and allowing as a deduction for property previously taxed only the net amount of the estate less the reduction required by the statutory formula.

The construction placed on the statute by the court below is correct and reasonable. Analysis of the statute itself shows that any other interpretation as applied to the instant situation would fail to fulfill the requirements of the statute (a) that the property be identified as having been received by the decedent, and (b) that the property must have been the subject of a previous tax.[3] *Rodenbough* v. *United States,* 25 F. (2d) 13 (C. C. A. 3). The prior decedent's taxes were paid only on the net value of his estate, and only

[3] The dissenting opinion below is in error in its sole focus on the last clauses of Section 303 (a) (2) (Appendix, *infra,* pp. 8–9) at the expense of the first and more crucial clauses. These last clauses provide a formula by which the deduction for previously taxed property allowable under the statute is reduced because of the existence of deductions under other sections of the statute. Its purpose is to prevent an estate which has large deductions for debts, expenses, and charitable bequests, as well as for property previously taxed, from escaping liability altogether. See H. Rep. No. 708, 72nd Cong., 1sf Sess., p. 48 (1939–1 Cum. Bull. (Part 2) 491). The gross estate referred to therein is that of the present estate. The formula in no way authorizes the use of gross figures of the prior estate in determining the amount of the deduction allowable in the present estate.

the net value was received by the present decedent. Compare *Parrott* v. *Commissioner,* 30 F. (2d) 792 (C. C. A. 9), certiorari denied 279 U. S. 870. To allow the items which have already been deducted from the prior decedent's estate to be deducted also from decedent's estate would be to permit a double deduction. Wherever possible, double deductions should be avoided. *Ilfeld Co.* v. *Hernandez,* 292 U. S. 62, 68. The circumstance that the prior decedent's estate had not been closed by decedent as executor and the partnership had not been fully liquidated when decedent died does not alter the situation.

Petitioners claim that under Texas law all of the prior decedent's property as well as his debts passed to the decedent. The Texas law cannot thus vary the usual method of determining the net estate for the purposes of measuring the federal estate tax due. It is well settled that whenever possible federal revenue laws are uniformly applied. In *United States* v. *Pelzer,* decided March 3, 1941, not officially reported, this Court said:

> But as we have often had occasion to point out, the revenue laws are to be construed in the light of their general purpose to establish a nation-wide scheme of taxation uniform in its application. Hence their provisions are not to be taken as subject to state control or limitation unless the language or necessary implication of the section involved makes its application dependent on state law. * * *

Nothing in the present statute indicates an intention that state laws should control in the method used for determination of the amount of a net estate for the purposes of federal taxation.

The instant case does not present a question of general importance but turns on its own particular facts. The circumstance that the decedent herein was his brother's executor as well as sole devisee and had not administered the prior estate has caused some confusion, but does not affect the result. No conflict of decisions is presented by the petition.

CONCLUSION

The decision below is correct and there is no conflict. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
J. LOUIS MONARCH,
JOHN J. PRINGLE, JR.,
Special Assistants to the Attorney General.

AUGUST 1941.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9, as amended by Section 806 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169, and as amended by Section 402 of the Revenue Act of 1934, c. 277, 48 Stat. 680:

> SEC. 303. For the purpose of the tax the value of the net estate shall be determined—
>
> (a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate—
>
> * * * * *
>
> (2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the

decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction. * * *
(U. S. C., Title 26, Sec. 412.)

Treasury Regulations 80 (1934 Ed.):

ART. 41. *Deduction of the value of transfers previously taxed.*—Should there be included in the decedent's gross estate the value of property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(*a*) *Conditions.*—

(1) The property respecting which the deduction is sought must have been received by